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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/438,104	11/10/1999	ASGEIR SAEBO	CONLINCO-040	8881
23535	7590	04/13/2006	EXAMINER	
MEDLEN & CARROLL, LLP 101 HOWARD STREET SUITE 350 SAN FRANCISCO, CA 94105			JONES, DWAYNE C	
		ART UNIT	PAPER NUMBER	1614

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/438,104	SAEBO ET AL.	
	Examiner	Art Unit	
	Dwayne C. Jones	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26JAN06 and the interview of 11APR06.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 7-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 7-24 are pending.
2. Claims 7-24 are rejected.

Response to Arguments

3. Applicant's arguments and declaration filed January 26, 2006 have been fully considered but they are not persuasive with respect to the provisional rejections under the judicially created doctrine of obviousness-type double patenting.

Claim Rejections - 35 USC § 103

4. The rejection of claims 7-24 under 35 U.S.C. 103(a) as being unpatentable over Cain et al. of WO 97/18320 is withdrawn.

Allowable Subject Matter

5. The following is a statement of reasons for the indication of allowable subject matter: the instant claims are free of the prior art of Cain et al. in view of the decision by the Board of Patent Appeals and Interferences, which was mailed on August 30, 2005, for copending application 09/132,593. In addition, the Saebo Declaration shows that other isomers besides the c9, t11- and t10, c12-octadecadienoic acids were necessarily present in the Cain et al. example. The skilled artisan is not provided with motivation to have a composition of at least 50% c9, t11- and t10, c12-octadecadienoic acid and additional has less than 1% of content of 8,10- and 11,13-octadecadienoic acid isomers.

Obviousness-type Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. The provisional rejection of claims 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, and 22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/623,825 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and copending Application No. 10/623,825 teach of esters and triglycerides of octadecadienoic acids that have c9, t11- and t10, c12-octadecadienoic acid contents greater than 50% and a content of 8,10- and 11,13-octadecadienoic acid isomers less than 5%, which embraces the instantly claimed 1%.

8. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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9. The provisional rejection of claims 7-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 8 of copending Application No. 09/132,593 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant invention and copending Application No. 09/132,593 teach of esters and triglycerides of compositions of octadecadienoic acids that have c9,t11- and t10,c12-octadecadienoic acid contents greater than 50% and a content of 8,10- and 11,13-octadecadienoic acid isomers less than 2%, which embraces the instantly required 1% limitation. In addition, copending Application No. 09/132,593 teaches of food products of these compositions.

10. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. The provisional rejection of claims 8, 9, 11, 12, 14, 15, 17, 18, 20, 21, and 22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-8 and 13-17 of copending Application No. 09/271,024 is maintained and repeated. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant invention as well as copending Application No. 09/271,024 teach of composition of esters and glycerides of octadecadienoic acid that have contents of at least 30% c9,t11- and t11,c12-octadecadienoic acid and less 1% of 8,10- and 11,13 octadecadienoic acids. In addition, copending Application No. 09/271,024 593 teaches of food products of these compositions.

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12. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (571) 272-0578. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, and Fridays from 8:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, may be reached at (571) 272-0951. The official fax No. for correspondence is (571)-273-8300.

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Also, please note that U.S. patents and U.S. patent application publications are no longer supplied with Office actions. Accordingly, the cited U.S. patents and patent application publications are available for download via the Office's PAIR, see <http://pair-direct.uspto.gov>. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications may be obtained from Private PAIR only. For more information about PAIR system, see <http://pair-direct.uspto.gov> Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll free).

DWAYNE JONES
PRIMARY EXAMINER

Tech. Ctr. 1614
April 11, 2005